

# Other Defense Activities Office of Hearings and Appeals

## Overview

### Appropriation Summary by Program

(dollars in thousands)

	FY 2003 Comparable Appropriation	FY 2004 Original Appropriation	FY 2004 Adjustments	FY 2004 Comparable Appropriation	FY 2005 Request
Other Defense Activities					
Hearings and Appeals.....	2,914	3,797	-22 <sup>a</sup>	3,775	4,318
Subtotal, Other Defense Activities, Hearings and Appeals.....	2,914	3,797	-22	3,775	4,318
Total, Other Defense Activities, Hearings and Appeals.....	2,914	3,797	-22	3,775	4,318

## Preface

The Department of Energy operates and supervises a great number of programs to further its National Defense and the Environmental Strategic Goals. Many of these programs seek to balance the interests of different and sometimes competing stakeholders. The Office of Hearings and Appeals provides legal adjudicatory services for the Department's programs so that these conflicting interests may be decided in a fair, impartial and efficient manner.

Within the Other Defense Activities Appropriation, the Office of Hearings and Appeals operates with three principal legal staffs – the Office of Legal Analysis, the Office of Financial Analysis and the Office of Economic Analysis.

This Overview will describe Strategic Context, Mission, and Benefits. These items together put this Appropriation in perspective.

## Strategic Context

Following publication of the Administration's National Energy Policy, the Department developed a Strategic Plan that defines the mission, four strategic goals for accomplishing that mission, and seven general goals to support the strategic goals. As stated in the Departmental Strategic Plan, DOE's Strategic and General Goals will be accomplished not only through the efforts of the major program offices in the Department but with additional effort from offices which support the programs in carrying

<sup>a</sup> Distribution of the rescission from the Consolidated Omnibus Appropriation Bill in FY 2004.

out the mission. The Office of Hearings and Appeals performs critical functions which directly support the mission. These functions include ensuring, through its role in conducting hearings in Personnel Security cases, that only trustworthy employees are allowed access to classified information or controlled nuclear materials. Likewise, in its supervision of Whistleblower hearings, the Office insures that the Department has a workplace where employee concerns about health and safety, fraud, waste, abuse or mismanagement may be freely expressed to DOE or contractor management without fear of retaliation. The Office also plays a significant role in insuring that contractor employees have an opportunity to receive assistance from the Department in claiming compensation benefits for injuries caused by exposure to toxic materials. The Office's role in deciding Appeals and Applications for Exceptions supports the Department in ensuring that relevant regulations and statutes are applied properly and without undue disruption to the private sector. This directly benefits the public and reduces the Department's litigation costs in Federal courts.

## **Mission**

The Office of Hearings and Appeals (OHA) mission is to conduct fair and efficient hearings and to issue decisions of the Department with respect to any adjudicative proceedings that the Secretary may delegate. OHA's jurisdiction includes, for example, security clearance hearings, hearings of complaints filed under the DOE Contractor Employee Protection Program as well as appeals requesting review of any determination reached by any official within the Department under OHA's jurisdiction.

## **Benefits**

In its adjudicatory mission for the Department, OHA offers a fair, impartial and customer-friendly process in which firms and individuals may seek review of agency actions. OHA is also charged with conducting hearings in Personnel Security cases. OHA issues timely, high quality decisions in cases involving DOE personnel security clearance adjudications that ensure that only trustworthy personnel are allowed access to classified information and special nuclear materials. Thus, OHA directly supports the Department's Defense Strategic Goal of helping ensure the security of the nuclear weapons stockpile.

OHA also conducts investigations and hearings concerning whistleblower complaints filed by DOE contractor employees and for issuing final agency decisions resolving them. In these cases, OHA strives to balance the public interest in promoting a workplace where concerns may be freely expressed without retaliation against the need of DOE contractors to manage their resources efficiently. This is especially important with regard to the Department's Environmental Strategic Goal to ensure that cleanup of the environmental legacy of the Cold War is effectively performed.

OHA is also designated as the appellate authority under Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). Pursuant to this jurisdiction, OHA considers appeals related to DOE's physician panel process to assist contractor employees in filing for workers' compensation benefits based on illness or death caused by exposure to a toxic substance while employed at a DOE facility.

The Office also analyzes and decides appeals requesting review of any determination reached by any other official within the Department under the jurisdiction of the Secretary, including initial determinations under the Freedom of Information Act, the Privacy Act, the payments-equal-to-taxes (PETT) provisions of the Nuclear Waste Policy Act of 1982, the special assessment provisions for the Uranium Enrichment Decontamination and Decommissioning Fund under the Energy Policy Act of 1992, and the reimbursement of costs of remedial actions at active uranium or thorium processing sites under the Energy Policy Act of 1992. OHA is responsible for deciding Applications for Exception from the generally applicable requirements of a rule, regulation or order of the Department. The Office also analyzes Petitions for Special Redress seeking "extraordinary relief" apart from or in addition to any other remedy provided in the Department's enabling statutes. By ensuring that the Department properly applies relevant regulations and statutes to affected parties, OHA directly benefits the public and saves the Department litigation expenses in federal courts.

Under proposed regulations, pursuant to the Bob Stump National Defense Authorization Act for FY2003, the Office of Hearings and Appeals has been designated as the appeal authority for contractors who have been found to violate the contractor's DOE-approved worker safety and health program. If enacted, OHA will further contribute to the Department's Environmental Strategic Goal.



## Program Direction

### Funding Profile by Category

(dollars in thousands/whole FTEs)

	FY 2003	FY 2004	FY 2005	\$ Change	% Change
Headquarters					
Salaries and Benefits.....	2,300	3,020	3,193	+173	+5.7%
Travel.....	80	80	90	+10	+12.5%
Support Services.....	20	20	100	+80	+400.0%
Other Related Expenses.....	514	655	935	+280	+42.7%
Total, Program Direction.....	2,914	3,775	4,318	+543	+14.4%
Total, Full Time Equivalents.....	17	21	23	+2	+9.5%

### Mission

The Office of Hearings and Appeals (OHA) mission is to conduct fair and efficient hearings and to issue decisions of the Department with respect to any adjudicative proceedings which the Secretary may delegate. OHA's jurisdiction includes, for example, security clearance hearings, hearings of complaints filed under the DOE Contractor Employee Protection Program as well as appeals requesting review of any determination reached by any other official within the Department under OHA's jurisdiction.

As stated in the Departmental Strategic Plan, DOE's Strategic and General Goals will be accomplished not only through the efforts of the major program offices in the Department but with additional effort from offices which support the programs in carrying out the mission. The Office of Hearings and Appeals performs critical functions which directly support the mission of the Department. These functions include ensuring, through its role in conducting hearings in Personnel Security cases, that only trustworthy employees are allowed access to classified information or controlled nuclear materials. Likewise, in its supervision of Whistleblower hearings, the Office insures that the Department has a workplace where employee concerns about health and safety, fraud, waste, abuse or mismanagement may be freely expressed to DOE or contractor management with out fear of retaliation. The Office also plays a significant role in insuring that contractor employees have an opportunity to receive assistance from the Department in claiming compensation benefits for injuries caused by exposure to toxic materials. The Office's role in deciding Appeals and Applications for Exceptions supports the Department in ensuring that relevant regulations and statutes are applied properly and without undue disruption to the private sector. This directly benefits the public and reduces the Department's litigation costs in Federal courts.

## Detailed Justification

(dollars in thousands)

	FY 2003	FY 2004	FY 2005
<b>Salaries and Benefits</b> .....	<b>2,300</b>	<b>3,020</b>	<b>3,193</b>
<p>Funding supports 23 FTEs in FY 2005 including costs for pay raises and promotions. The Office of Hearings and Appeals staff provides hearing officers and decisions in a wide variety of matters, such as security clearance and whistleblower cases.</p>			
<b>Travel</b> .....	<b>80</b>	<b>80</b>	<b>90</b>
<p>For transportation to DOE field sites to conduct hearings on cases and on whistleblower investigations. The FY 2005 estimate reflects a higher amount due to expected increases in the cost of airfare.</p>			
<b>Support Services</b> .....	<b>20</b>	<b>20</b>	<b>100</b>
<p>Funding for support of OHA's computer information system and maintaining OHA's internet presence, including costs charged through the Working Capital Fund. OHA utilizes computer information systems to improve management and promote efficient use of resources, and it promptly (within 24 hours) publishes OHA decisions and findings on its publicly accessible, customer-friendly and increasingly visited website.</p>			
<b>Other Related Expenses</b> .....	<b>514</b>	<b>655</b>	<b>935</b>
<p>This category includes funding for employee training and charges by the Working Capital Fund for base services: rent, utilities, telephone, supplies, postage, building operations, photocopies, telecommunications, printing (including publication of federal register notices, and printing of decisions). OHA also pays for certain services directly, including timesharing (Westlaw) and purchases of computer equipment and software.</p>			
<b>Total, Program Direction</b> .....	<b>2,914</b>	<b>3,775</b>	<b>4,318</b>

## Explanation of Funding Changes

FY 2005 vs. FY 2004 (\$000)
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### Salaries and Benefits

- FY 2005 funding change increase includes pay raises, promotions and to support an increase of 2 FTEs for a total of 23 FTEs ..... +173

### Travel

- Increased funding for FY 2005 is needed to cover greater costs for travel to conduct hearings in security clearance and whistleblower adjudications ... +10

### Support Services

- Increase in funding for FY 2005 is needed to cover greater costs for contractor support for the Office's Information Technology systems ..... +80

### Other Related Expenses

- Increase in FY 2005 funding is needed to cover increased costs for items such as rent, utilities, telephone, supplies, postage, building operations, photocopies and telecommunications..... +280

<b>Total Funding Change, Program Direction.....</b>	<b>+543</b>
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## Support Services by Category

(dollars in thousands)

	FY 2003	FY 2004	FY 2005	\$ Change	% Change
Technical Support.....	20	20	100	+80	+400.0%
Total, Support Services.....	20	20	100	+80	+400.0%

## Other Related Expenses by Category

(dollars in thousands)

	FY 2003	FY 2004	FY 2005	\$ Change	% Change
Working Capital Fund.....	502	636	915	+280	+44.1%
Other Services .....	12	20	20	0	0.0%
Total, Other Related Expenses...	514	655	935	+280	+42.7%